

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

<b>CBEYOND COMMUNICATIONS, LLP.</b>	)
<b>GLOBAL TELDATA II, LLC.</b>	)
<b>NUVOX COMMUNICATIONS OF ILLINOIS, INC.</b>	)
<b>TALK AMERICA INC.</b>	)
	)
<b>Complainants,</b>	)
	)
<b>vs.</b>	)
	)
<b>ILLINOIS BELL TELEPHONE COMPANY,</b>	)
<b>d/b/a SBC ILLINOIS,</b>	)
	)
<b>Respondent.</b>	)

**Docket No. 05-0154**

**DIRECT TESTIMONY OF MARK LIEBERMAN  
ON BEHALF OF GLOBAL TELDATA, INC.,  
N/K/A GLOBAL TELDATA II, LLC.**

Date filed:     March 28, 2005

**Q: PLEASE STATE YOUR FULL NAME, BUSINESS ADDRESS, AND TITLE FOR THE RECORD.**

A. My name is Mark Lieberman. My business address is 4700 North Ravenswood Avenue, Chicago, Illinois 60640. I am currently employed by Global TelData, Inc. n/k/a Global TelData II, LLC ("Global TelData") as Chief Operating Officer.

**Q. WHAT ARE YOUR JOB RESPONSIBILITIES?**

A. I have held my current title for approximately two and one half years. My duties include managing a corporate group responsible for our relationship with the RBOCs, including SBC, and other carrier vendors such as AT&T & MCI. My areas of responsibility include all aspects of operations, network management, cost management, disputes with the RBOCs and vendors, dispute escalations, contract negotiations, carrier access billing and collections and regulatory support.

**Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

A. It is my understanding that the Complainants in this proceeding have alleged seven counts against Illinois Bell Telephone Company, d/b/a SBC Illinois. While I am not an attorney, Counsel has informed me that six of those seven counts are legal in nature and will be fully addressed in briefs. However, certain elements of Count VII may require factual information from the Complainants in order to prove up a violation.

My testimony will address only the facts related to SBC Illinois' violations of Section 13-514(2), (6) and (8). Counsel has informed me that the remainder of the alleged violations of Section 13-514(1), (10), (11) and (12) found in Count VII are also legal in nature and will be addressed in the briefs.

**Q. DOES GLOBAL TELDATA PROVIDE SERVICE TO ILLINOIS END**

## **USER CUSTOMERS?**

A. Yes. Global TelData currently provides local telephone service in Illinois to more than 10,000 lines and 8,000 Illinois customers. The vast majority of these are residential and small business customers. These residential and small business customers are known as “Mass Market” customers within Global TelData.

Global TelData serves the vast majority of its Mass Market local customers in Illinois by utilizing services and network elements provided by SBC Illinois. Specifically, Global TelData uses a specific combination of SBC Illinois’ network elements known as the Unbundled Network Elements – Platform, or “UNE-P” to provide service. Global TelData has been serving Mass Markets customers in Illinois based upon the UNE-P since approximately 2001. Global TelData and SBC Illinois have long-established procedures in place by which Global TelData places UNE-P orders, and SBC Illinois processes those orders.

## **Q. WHAT IS THE PROCESS GLOBAL TELDATA AND SBC ILLINOIS HAVE IN PLACE TO PROVISION UNE-P SERVICES IN ILLINOIS?**

A. Global TelData at present markets local telephone services to Mass Market customers in Illinois based on the availability of UNE-P. The terms and conditions under which Global TelData orders UNE-P from SBC Illinois, and under which SBC Illinois provisions UNE-P service to Global TelData, are set out in the Parties’ Interconnection Agreement approved by this Commission in ICC Docket No. 01-0789<sup>1</sup>, and the tariffs

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<sup>1</sup> SBC Illinois and Global TelData have also submitted and received approval of five different amendments to the Interconnection Agreement, ICC Docket Nos. 01-0790, 01-0805, 03-0458, 04-0485 and 04-0633. Attached to this testimony as Exs. 4.3 through 4.6 are relevant portions of the current Interconnection Agreement, including the amendments. However, rather than attach the entire set of documents, Counsel informs me that the ALJ can take Administrative Notice of the documents in the listed proceedings.

approved by the Commission in ICC Docket No. 01-0614.<sup>2</sup>

Upon receiving the Mass Markets customer's request for new local telephone service or for modifying an existing customer's UNE-P service, Global TelData places an order with SBC Illinois. After Global TelData transmits a UNE-P order to SBC, SBC provisions the service, for which Global TelData pays SBC Illinois a fee. In addition, each month SBC Illinois recovers from Global TelData a monthly recurring charge for each UNE-P line Global TelData serves to its customers.

**Q. HAS SBC ILLINOIS ATTEMPTED TO TAKE ANY ACTION IMPLEMENTING THE FCC'S *TRO REMAND ORDER*?**

A. Yes. SBC Illinois issued an Accessible Letter on February 10, 2005 announcing its unilateral intention to withdraw its wholesale tariffs effective March 13, 2005. On February 11, 2005, SBC Illinois issued several Accessible Letters in which it notified CLECs that the *TRO Remand Order* had been released. These letters were attached to the Complaint as Ex. B. SBC Illinois announced that "as of the effective date of the *TRO Remand Order*, i.e., March 11, 2005, [competing carriers] are no longer authorized to place, nor will SBC accept," new orders for unbundled switching. Even for competing carriers' existing customers, SBC Illinois announced that it would no longer accept orders to add new lines. The Accessible Letters state that SBC Illinois the "effect of the *TRO Remand Order*" is "operative *notwithstanding interconnection agreements or applicable tariffs*."<sup>3</sup> I understand the Complainants are submitting SBC Illinois'

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<sup>2</sup> See Ex. 5.8 for relevant pages of the SBC Illinois tariffs. Counsel explains to me that the ALJ can take administrative notice of SBC Illinois' current tariffs, rather than produce the entirety of the document. Further, Ex. 5.10 is Schedule SJA-4 attached to Ex. 3.1 filed by SBC Illinois in ICC Docket No. 00-0700, specifically incorporated into Section 13-801.

<sup>3</sup> On March 7, 2005, SBC Illinois indicated to Counsel for the Complainants that, irrespective of the terms of the Accessible Letters, "SBC Illinois will continue to provide unbundled local switching and UNE-P while the Section 13-801, as interpreted by the ICC in the initial Order in Docket 01-0614, remains

Accessible Letters CLECALL05-016, -017, -018, -019 and -020 as Exhibits 5.0 through 5.4.

**Q. HAS GLOBAL TELDATA ATTEMPTED TO BEGIN NEGOTIATIONS WITH SBC ILLINOIS IN AN ATTEMPT TO IMPLEMENT THE FCC'S DETERMINATIONS IN THE *TRO REMAND ORDER*?**

A. Yes. On March 24, 2005, Global TelData sent a letter to SBC requesting an opportunity to negotiate a change to its interconnection agreement. A copy of that letter is attached as Ex. 4.1. Global TelData requested that the parties begin the Change in Law process related to the FCC's *Triennial Review Order* and the related *TRO Remand Order*, and that negotiations be designed to amend the existing Interconnection Agreement so as to comply with the federal unbundling rules, while taking into account any Section 271 and additional state unbundling rules. On March 24, 2005, our SBC Illinois account representative responded via email and referred Global TelData to a set of standard terms posted on their CLEC Online website. A copy of that email is attached hereto as Ex. 4.2. At the time of filing this testimony, Global TelData has not received any further response.

**Q. WHAT WERE SOME OF THE PROBLEMS ASSOCIATED WITH SBC'S PROPOSED ACCESSIBLE LETTER AND THE ATTACHED AMENDMENTS TO WHICH GLOBAL TELDATA COULD NOT AGREE?**

A. The proposed amendment and Accessible Letters did not, in our mind, reflect all that is necessary for the parties to implement the FCC's orders, and conflicted with our

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in effect." One such event that would trigger discontinuation is Judge Gottschall from the U.S. District Court rules on SBC's pending Motion for Preliminary Injunction in Case No. 05-C-1149, or otherwise invalidates the Commission's order in ICC Docket No. 01-0614. See, Ex. 5.5, pages 5-6. SBC did not retract the Accessible Letters. As of the time of preparing this testimony, Judge Gottschall has not issued her ruling. Thus, this testimony is limited to the terms of the Accessible Letters and does not take into account SBC's federal Complaint or Motion for Preliminary Injunction.

understanding of those orders. Under the terms of our current Interconnection Agreement, SBC Illinois is obligated to provide UNE-P without reservation, caps or exception. However, based on the Accessible letters SBC Illinois intended to refuse Global TelData's orders to add any new UNE-P customers in Illinois.<sup>4</sup> I further understand that, according to the accessible letters, SBC Illinois planned to refuse certain orders placed by Global TelData for Global TelData's existing UNE-P customers. For example, under the terms of the Accessible Letters, if an existing customer that Global TelData serves using UNE-P moves to a new address, SBC Illinois will refuse Global TelData's order to provide UNE-P service to that same UNE-P customer at the new address. Similarly, if an existing customer that Global TelData serves using UNE-P wishes to add a second phone line at their current address, SBC Illinois would refuse Global TelData's order to add that second phone line using UNE-P. Similarly, if the Global TelData UNE-P customer wants to add new vertical services or otherwise modify its services for an existing UNE-P line, SBC Illinois would refuse Global TelData's order for that service.

Further, with respect to UNE-P services, the proposed amendment does not account for any additional state unbundling authority. I understand that Counsel will be addressing the impact of Section 13-801 and SBC Illinois' intrastate tariffs in our briefs, so I will not go into detail other than to say that failure to account for this additional unbundling source prohibited Global TelData from agreeing to the SBC-proposed amendment.

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<sup>4</sup> Due to the *Order Granting Emergency Relief*, SBC Illinois was obligated to "continue to offer the same UNEs as required by the parties' current ICAs until those ICAs are amended pursuant to Section 252....". I understand one end result of this case is whether SBC Illinois' Accessible Letters can ultimately go into effect or whether the terms of the ICAs govern until an amendment is completed.

**Q. DOES GLOBAL TELDATA INTEND TO CONTINUE TO PROVIDE UNE-P SERVICES TO NEW AND EXISTING ILLINOIS CUSTOMERS DURING THE PENDING CHANGE IN LAW NEGOTIATIONS?**

A. Yes. Under our current Interconnection Agreement, the terms of the current agreement continue in full force and effect until such time as the Parties have successfully negotiated new language and the Commission has adopted the amendments pursuant to Section 251/252. Thus, we are entitled under our current Interconnection Agreement to continue provisioning UNE-P services in Illinois. Of course, once we have negotiated an amendment to the agreement, we will abide by the terms of that amendment.

**Q. WHAT IMPACT WOULD SBC ILLINOIS' ACTIONS HAVE ON GLOBAL TELDATA?**

A. If SBC Illinois' plan to refuse Global TelData's UNE-P orders would take effect, Global TelData will suffer significant adverse consequences, in several respects.

First, if SBC Illinois is allowed to remove Global TelData's access to UNE-P as it wishes, Global TelData will have to stop marketing its service to new Illinois customers. This will result in Global TelData receiving far fewer requests for new service and, at some point, many of the employees responsible for processing such orders are likely to be released, diminishing Global TelData's ability to service new customers if Global TelData is later able to process new orders.

Second, when customers do call seeking new service, Global TelData will be forced to begin denying requests for local telephone service from Mass Markets customers in Illinois. Thus, when Mass market customers call Global TelData seeking

local telephone service, Global TelData will be forced to tell those Mass market customers that Global TelData cannot provide them with local telephone service. On average, Global TelData receives requests from over 200 Mass Markets customers for new local telephone service in Illinois every week.

Third, when existing Mass Markets customers move to a new address, and contact Global TelData seeking to transfer their Global TelData local telephone service to new addresses, Global TelData will be forced to tell those customers that Global TelData cannot provide local telephone service at their new addresses.

Fourth, when existing Mass Markets customers seek to add additional lines to their existing local services, Global TelData will be forced to tell those customers that Global TelData cannot provide additional lines to their services. This scenario is particularly problematic with respect to Global TelData's ability to serve its small business Mass Markets customers in Illinois, since small businesses are more likely to need to add additional lines than residential customers.

**Q. WILL THESE ACTIONS BY SBC ILLINOIS HARM GLOBAL TELDATA'S RELATIONSHIPS WITH ITS CUSTOMERS?**

A. Yes. As an example, Global TelData is at present actively marketing local telephone service to Mass Markets customers in Illinois, and provisions those services through purchasing UNE-P services consistent with its current Interconnection Agreement with SBC Illinois. Customers that seek new service from Global TelData but are unable to obtain it or seek to make changes to their existing services that Global TelData cannot provide, almost certainly will view Global TelData much less favorably, and are much more likely to look for an alternative carrier as an alternative for their local



telephone services. The net result of SBC Illinois' proposed unilateral imposition of its Accessible Letters without going through the Change in Law negotiations as required under the Interconnection Agreement would be Global TelData losing some of its current base, and most if not all of its future base, to other carriers such as SBC Illinois. Moreover, these adverse consequences would cause serious, irreparable, and unquantifiable damage to Global TelData's customer goodwill and reputation.

**Q. WOULD THESE ACTIONS BY SBC ILLINOIS IMPAIR THE SPEED, QUALITY OR EFFICIENCY OF SERVICES USED BY GLOBAL TELDATA?**

A. Yes. The adverse consequences described above would certainly impair the speed, quality or efficiency of services used by Global TelData. It is axiomatic that SBC Illinois' refusal to provision an order for UNE-P that is consistent with the contractual terms of the Interconnection Agreement as well as binding state law would adversely impact the speed, quality and efficiency of the services used by Global TelData. If Global TelData has a right to place the order, and SBC Illinois is obligated to provision the order but refuses, the natural result is an impairment of the ability of Global TelData to provide its retail services in Illinois.

**Q. WOULD THESE ACTIONS BY SBC ILLINOIS HAVE A SUBSTANTIAL ADVERSE EFFECT ON THE ABILITY OF GLOBAL TELDATA TO PROVIDE SERVICE TO ITS ILLINOIS CUSTOMERS?**

A. Yes. Global TelData's customers in Illinois are looking to it for quick, efficient, reliable telecommunications services. However, SBC Illinois threatened unilateral imposition of terms it claims comply with the *TRO Remand Order* without first going through the Change in Law negotiations as required under the Interconnection Agreement

will preclude Global TelData from being in a position to meet its customer's expectations. Again, it is axiomatic that if Global TelData cannot provide its customers the retail services they request due to SBC Illinois' actions, then SBC Illinois' actions have a substantial adverse effect on Global TelData's ability to provide service to its Illinois customers.

**Q. WOULD THESE ACTIONS BY SBC ILLINOIS UNREASONABLY DELAY OR IMPEDE THE AVAILABILITY OF TELECOMMUNICATIONS SERVICES TO ILLINOIS CONSUMERS?**

A. Yes. Just as with the last two questions, it is axiomatic that SBC Illinois' refusal to provision Global TelData's UNE-P orders that are appropriate under the terms of the current Interconnection Agreement, Section 13-801 or other sources of law will result in a delay or impediment of the telecommunications services to Illinois consumers.

**Q: DOES THIS CONCLUDE YOUR TESTIMONY?**

A: Yes.